

1 **ALCOHOLIC BEVERAGE POLICY AMENDMENTS**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Jerry W. Stevenson**

5 House Sponsor: Brad R. Wilson

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions related to alcoholic policies.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ amends the provision related to bringing alcoholic products onto or removing
- 13 alcoholic products from premises;
- 14 ▶ modifies licensing requirements of an on-premise beer retailer that is not a tavern;
- 15 ▶ modifies certain quotas;
- 16 ▶ addresses licensing fees;
- 17 ▶ amends the operational requirements for transferees;
- 18 ▶ repeals the requirement that a person file a notice of intended transfer and makes
- 19 conforming amendments;
- 20 ▶ amends notice requirements related to notice of a transfer of a license;
- 21 ▶ amends the application process for transfers; and
- 22 ▶ makes technical changes.

23 **Money Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 This bill provides a special effective date.

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **32B-5-307**, as last amended by Laws of Utah 2011, Chapters 307 and 334

30 **32B-6-203**, as last amended by Laws of Utah 2012, Fourth Special Session, Chapter 1

31 **32B-6-303**, as last amended by Laws of Utah 2012, Fourth Special Session, Chapter 1

32 **32B-6-304**, as last amended by Laws of Utah 2012, Fourth Special Session, Chapter 1

33 **32B-6-603**, as last amended by Laws of Utah 2011, Chapter 334

34 **32B-6-703**, as last amended by Laws of Utah 2011, Second Special Session, Chapter 2

35 **32B-6-803**, as enacted by Laws of Utah 2011, Chapter 334

36 **32B-8a-202**, as enacted by Laws of Utah 2011, Chapter 334 and further amended by

37 Revisor Instructions, Laws of Utah 2013, Chapter 349

38 **32B-8a-203**, as enacted by Laws of Utah 2011, Chapter 334 and further amended by

39 Revisor Instructions, Laws of Utah 2013, Chapter 349

40 **32B-8a-302**, as and further amended by Revisor Instructions, Laws of Utah 2013,

41 Chapter 349

42 **32B-8a-401**, as enacted by Laws of Utah 2011, Chapter 334 and further amended by

43 Revisor Instructions, Laws of Utah 2013, Chapter 349

44 REPEALS:

45 **32B-8a-301**, as enacted by Laws of Utah 2011, Chapter 334 and further amended by

46 Revisor Instructions, Laws of Utah 2013, Chapter 349

47 **32B-8a-403**, as enacted by Laws of Utah 2011, Chapter 334 and further amended by

48 Revisor Instructions, Laws of Utah 2013, Chapter 349

49

50 *Be it enacted by the Legislature of the state of Utah:*

51 Section 1. Section **32B-5-307** is amended to read:

52 **32B-5-307. Bringing alcoholic product onto or removing alcoholic product from**
53 **premises.**

54 (1) Except as provided in Subsection (3):

55 (a) A person may not bring onto the licensed premises of a retail licensee an alcoholic
56 product for on-premise consumption.

57 (b) A retail licensee may not allow a person to:

58 (i) bring onto licensed premises an alcoholic product for on-premise consumption; or
59 (ii) consume an alcoholic product brought onto the licensed premises by a person other
60 than the retail licensee.

61 (c) A retail licensee may not sell, offer for sale, or furnish an alcoholic product through
62 a window or door to a location off the licensed premises or to a vehicular traffic area.

63 (2) Except as provided in Subsection (3):

64 (a) A person may not carry from a licensed premises of a retail licensee an open
65 container that:

66 (i) is used primarily for drinking purposes; and

67 (ii) contains an alcoholic product.

68 (b) A retail licensee may not permit a patron to carry from the licensed premises an
69 open container described in Subsection (2)(a).

70 (c) Except as provided in Subsection (3)(d) or Subsection [32B-4-415\(5\)](#):

71 (i) a person may not carry from a licensed premises of a retail licensee a sealed
72 container of liquor that has been purchased from the retail licensee; and

73 (ii) a retail licensee may not permit a patron to carry from the licensed premises a
74 sealed container of liquor that has been purchased from the retail licensee.

75 (3) (a) A patron may bring a bottled wine onto the premises of a retail licensee for
76 on-premise consumption if:

77 (i) permitted by the retail licensee; and

78 (ii) the retail licensee is authorized to sell, offer for sale, or furnish wine.

79 (b) If a patron carries bottled wine onto the licensed premises of a retail licensee, the
80 patron shall deliver the bottled wine to a server or other representative of the retail licensee
81 upon entering the licensed premises.

82 (c) A retail licensee authorized to sell, offer for sale, or furnish wine, may provide a
83 wine service for a bottled wine carried onto the licensed premises in accordance with this
84 Subsection (3).

85 (d) A patron may remove from a licensed premises the unconsumed contents of a bottle

86 of wine purchased in the licensed premises, or brought onto the licensed premises in
87 accordance with this Subsection (3), only if before removal the bottle is recorked or recapped.

88 Section 2. Section **32B-6-203** is amended to read:

89 **32B-6-203. Commission's power to issue full-service restaurant license.**

90 (1) Before a person may store, sell, offer for sale, furnish, or allow the consumption of
91 an alcoholic product on its premises as a full-service restaurant, the person shall first obtain a
92 full-service restaurant license from the commission in accordance with this part.

93 (2) The commission may issue a full-service restaurant license to establish full-service
94 restaurant licensed premises at places and in numbers the commission considers proper for the
95 storage, sale, offer for sale, furnishing, and consumption of an alcoholic product on premises
96 operated as a full-service restaurant.

97 (3) Subject to Section [32B-1-201](#):

98 (a) The commission may not issue a total number of full-service restaurant licenses that
99 at any time exceeds the number determined by dividing the population of the state by [~~4,534~~]
100 4,467.

101 (b) The commission may issue a seasonal full-service restaurant license in accordance
102 with Section [32B-5-206](#).

103 (c) (i) If the location, design, and construction of a hotel may require more than one
104 full-service restaurant sales location within the hotel to serve the public convenience, the
105 commission may authorize the sale, offer for sale, or furnishing of an alcoholic product at as
106 many as three full-service restaurant locations within the hotel under one full-service restaurant
107 license if:

108 (A) the hotel has a minimum of 150 guest rooms; and

109 (B) the locations under the full-service restaurant license are:

110 (I) within the same hotel; and

111 (II) on premises that are managed or operated, and owned or leased, by the full-service
112 restaurant licensee.

113 (ii) A facility other than a hotel shall have a separate full-service restaurant license for

114 each full-service restaurant where an alcoholic product is sold, offered for sale, or furnished.

115 (4) (a) Except as provided in Subsection (4)(b), the commission may not issue a
116 full-service restaurant license for premises that do not meet the proximity requirements of
117 Section 32B-1-202.

118 (b) With respect to the premises of a full-service restaurant license issued by the
119 commission that undergoes a change of ownership, the commission shall waive or vary the
120 proximity requirements of Subsection 32B-1-202(2) in considering whether to issue a
121 full-service restaurant license to the new owner of the premises if:

122 (i) when a full-service restaurant license was issued to a previous owner, the premises
123 met the proximity requirements of Subsection 32B-1-202(2);

124 (ii) the premises has had a full-service restaurant license at all times since the
125 full-service restaurant license described in Subsection (4)(b)(i) was issued without a variance;
126 and

127 (iii) the community location was located within the proximity requirements of
128 Subsection 32B-1-202(2) after the day on which the full-service restaurant license described in
129 Subsection (4)(b)(i) was issued.

130 Section 3. Section 32B-6-303 is amended to read:

131 **32B-6-303. Commission's power to issue limited-service restaurant license.**

132 (1) Before a person may store, sell, offer for sale, furnish, or allow the consumption of
133 wine, heavy beer, or beer on its premises as a limited-service restaurant, the person shall first
134 obtain a limited-service restaurant license from the commission in accordance with this part.

135 (2) (a) The commission may issue a limited-service restaurant license to establish
136 limited-service restaurant licensed premises at places and in numbers the commission considers
137 proper for the storage, sale, offer for sale, furnishing, and consumption of wine, heavy beer, or
138 beer on premises operated as a limited-service restaurant.

139 (b) A person may not sell, offer for sale, furnish, or allow the consumption of the
140 following on the licensed premises of a limited-service restaurant licensee:

141 (i) spirituous liquor; or

142 (ii) a flavored malt beverage.

143 (3) Subject to Section 32B-1-201:

144 (a) The commission may not issue a total number of limited-service restaurant licenses
145 that at any time exceeds the number determined by dividing the population of the state by
146 [~~7,493~~] 6,817.

147 (b) The commission may issue a seasonal limited-service restaurant license in
148 accordance with Section 32B-5-206.

149 (c) (i) If the location, design, and construction of a hotel may require more than one
150 limited-service restaurant sales location within the hotel to serve the public convenience, the
151 commission may authorize the sale of wine, heavy beer, and beer at as many as three
152 limited-service restaurant locations within the hotel under one limited-service restaurant license
153 if:

154 (A) the hotel has a minimum of 150 guest rooms; and

155 (B) the locations under the limited-service restaurant license are:

156 (I) within the same hotel; and

157 (II) on premises that are managed or operated, and owned or leased, by the
158 limited-service restaurant licensee.

159 (ii) A facility other than a hotel shall have a separate limited-service restaurant license
160 for each limited-service restaurant where wine, heavy beer, or beer is sold, offered for sale, or
161 furnished.

162 (4) (a) Except as provided in Subsection (4)(b), the commission may not issue a
163 limited-service restaurant license for premises that do not meet the proximity requirements of
164 Section 32B-1-202.

165 (b) With respect to the premises of a limited-service restaurant license issued by the
166 commission that undergoes a change of ownership, the commission shall waive or vary the
167 proximity requirements of Subsection 32B-1-202(2) in considering whether to issue a
168 limited-service restaurant license to the new owner of the premises if:

169 (i) when a limited-service restaurant license was issued to a previous owner, the

170 premises met the proximity requirements of Subsection 32B-1-202(2);

171 (ii) the premises has had a limited-service restaurant license at all times since the
172 limited-service restaurant license described in Subsection (4)(b)(i) was issued without a
173 variance; and

174 (iii) the community location was located within the proximity requirements of
175 Subsection 32B-1-202(2) after the day on which the limited-service restaurant license
176 described in Subsection (4)(b)(i) was issued.

177 Section 4. Section 32B-6-304 is amended to read:

178 **32B-6-304. Specific licensing requirements for limited-service restaurant license.**

179 (1) To obtain a limited-service restaurant license a person shall comply with Chapter 5,
180 Part 2, Retail Licensing Process.

181 (2) (a) A limited-service restaurant license expires on October 31 of each year.

182 (b) To renew a person's limited-service restaurant license, a person shall comply with
183 the renewal requirements of Chapter 5, Part 2, Retail Licensing Process, by no later than
184 September 30.

185 (3) (a) The nonrefundable application fee for a limited-service restaurant license is
186 \$330.

187 (b) The initial license fee for a limited-service restaurant license is [~~\$825~~] \$1,275.

188 (c) The renewal fee for a limited-service restaurant license is [~~\$605~~] \$750.

189 (4) The bond amount required for a limited-service restaurant license is the penal sum
190 of \$5,000.

191 Section 5. Section 32B-6-603 is amended to read:

192 **32B-6-603. Commission's power to issue on-premise banquet license -- Contracts**
193 **as host.**

194 (1) (a) Before a person may store, sell, offer for sale, furnish, or allow the consumption
195 of an alcoholic product in connection with the person's banquet and room service activities at
196 one of the following, the person shall first obtain an on-premise banquet license in accordance
197 with this part:

- 198 (i) a hotel;
- 199 (ii) a resort facility;
- 200 (iii) a sports center; or
- 201 (iv) a convention center.

202 (b) This part does not prohibit an alcoholic product on the premises of a person listed
203 in Subsection (1)(a) to the extent otherwise permitted by this title.

204 (c) This section does not prohibit a person who applies for an on-premise banquet
205 license to also apply for a package agency if otherwise qualified.

206 (2) The commission may issue an on-premise banquet license to establish on-premise
207 banquet licensees in the numbers the commission considers proper for the storage, sale, offer
208 for sale, furnishing, and consumption of an alcoholic product at a banquet or as part of room
209 service activities operated by an on-premise banquet licensee.

210 (3) Subject to Section [32B-1-201](#), the commission may not issue a total number of
211 on-premise banquet licenses that at any time exceed the number determined by dividing the
212 population of the state by [~~30,000~~] 28,765.

213 (4) Pursuant to a contract between the host of a banquet and an on-premise banquet
214 licensee:

215 (a) the host of the banquet may request an on-premise banquet licensee to provide an
216 alcoholic product served at the banquet; and

217 (b) an on-premise banquet licensee may provide an alcoholic product served at the
218 banquet.

219 (5) At a banquet, an on-premise banquet licensee may furnish an alcoholic product:

220 (a) without charge to a patron at a banquet, except that the host of the banquet shall pay
221 for an alcoholic product furnished at the banquet; or

222 (b) with a charge to a patron at the banquet.

223 Section 6. Section **32B-6-703** is amended to read:

224 **32B-6-703. Commission's power to issue on-premise beer retailer license.**

225 (1) Before a person may store, sell, offer for sale, furnish, or allow the consumption of

226 beer on the premises as an on-premise beer retailer, the person shall first obtain an on-premise
227 beer retailer license from the commission in accordance with this part.

228 (2) (a) The commission may issue an on-premise beer retailer license to establish
229 on-premise beer retailer licensed premises at places and in numbers as the commission
230 considers proper for the storage, sale, offer for sale, furnishing, and consumption of beer on
231 premises operated as an on-premise beer retailer.

232 (b) At the time that the commission issues an on-premise beer retailer license, the
233 commission shall designate whether the on-premise beer retailer is a tavern.

234 (c) The commission may change its designation of whether an on-premise beer retailer
235 is a tavern in accordance with rules made by the commission.

236 (d) (i) In determining whether an on-premise beer retailer is a tavern, the commission
237 shall determine whether the on-premise beer retailer will engage primarily in the retail sale of
238 beer for consumption on the establishment's premises.

239 (ii) In making a determination under this Subsection (2)(d), the commission shall
240 consider:

241 (A) whether the on-premise beer retailer will operate as one of the following:

242 (I) a beer bar;

243 (II) a parlor;

244 (III) a lounge;

245 (IV) a cabaret; or

246 (V) a nightclub;

247 (B) if the on-premise beer retailer will operate as described in Subsection (2)(d)(ii)(A):

248 (I) whether the on-premise beer retailer will sell food in the establishment; and

249 (II) if the on-premise beer retailer sells food, whether the revenue from the sale of beer
250 will exceed the revenue of the sale of food;

251 (C) whether full meals including appetizers, main courses, and desserts will be served;

252 (D) the square footage and seating capacity of the premises;

253 (E) what portion of the square footage and seating capacity will be used for a dining

254 area in comparison to the portion that will be used as a lounge or bar area;

255 (F) whether the person will maintain adequate on-premise culinary facilities to prepare
256 full meals, except a person that is located on the premises of a hotel or resort facility may use
257 the culinary facilities of the hotel or resort facility;

258 (G) whether the entertainment provided on the premises of the beer retailer will be
259 suitable for minors; and

260 (H) the beer retailer management's ability to manage and operate an on-premise beer
261 retailer license including:

262 (I) management experience;

263 (II) past beer retailer management experience; and

264 (III) the type of management scheme that will be used by the beer retailer.

265 (e) On or after March 1, 2012:

266 (i) To be licensed as an on-premise beer retailer that is not a tavern, a person shall:

267 (A) maintain at least 70% of the person's total gross revenues from business directly
268 related to a recreational amenity on or directly adjoining the licensed premises of the beer
269 retailer, except that a person may include gross revenue from business directly related to a
270 recreational amenity that is owned or operated by a political subdivision if the person has a
271 contract meeting the requirements of Subsection (2)(e)(v) with the political subdivision; or

272 (B) have a recreational amenity on or directly adjoining the licensed premises of the
273 beer retailer and maintain at least 70% of the person's total gross revenues from the sale of
274 food.

275 (ii) The commission may not license a person as an on-premise beer retailer if the
276 person does not:

277 (A) meet the requirements of Subsection (2)(e)(i); or

278 (B) operate as a tavern.

279 (iii) (A) A person licensed as an on-premise beer retailer that is not a tavern as of July
280 1, 2011 shall notify the department by no later than August 1, 2011, whether effective March 1,
281 2012, the person will seek to be licensed as a beer-only restaurant licensee, a tavern, or an

282 on-premise beer retailer that meets the requirements of Subsection (2)(e)(i).

283 (B) If an on-premise beer retailer fails to notify the department as required by
284 Subsection (2)(e)(iii)(A), the on-premise beer retailer's license expires as of February 29, 2012,
285 and to operate as an on-premise beer retailer after February 29, 2012, the on-premise beer
286 retailer is required to apply as a new licensee, and any bar or bar structure on the premises of an
287 on-premise beer retailer license that is not a tavern and does not meet the requirements of
288 Subsection (2)(e)(i) will not be grandfathered under Subsection 32B-6-902(1).

289 (iv) A person who, after August 1, 2011, applies for an on-premise beer retailer license
290 that is not a tavern and does not meet the requirements of Subsection (2)(e)(i), may not have or
291 construct facilities for the dispensing or storage of an alcoholic product that do not meet the
292 requirements of Subsection 32B-6-905(12)(a)(ii).

293 (v) A contract described in Subsection (2)(e)(i)(A) shall:

294 (A) allow the beer retailer to include the total gross revenue from operations of the
295 recreational amenity in the beer retailer's total gross receipts for purposes of Subsection
296 (2)(e)(i)(A); and

297 (B) give the department the authority to audit financial information of the political
298 subdivision to the extent necessary to confirm that the requirements of Subsection (2)(e)(i)(A)
299 are met.

300 (3) Subject to Section 32B-1-201:

301 (a) The commission may not issue a total number of on-premise beer retailer licenses
302 that are taverns that at any time exceeds the number determined by dividing the population of
303 the state by [~~54,147~~] 73,666.

304 (b) The commission may issue a seasonal on-premise beer retailer license for a tavern
305 in accordance with Section 32B-5-206.

306 (4) (a) Unless otherwise provided in Subsection (4)(b):

307 (i) only one on-premise beer retailer license is required for each building or resort
308 facility owned or leased by the same person; and

309 (ii) a separate license is not required for each retail beer dispensing location in the

310 same building or on the same resort premises owned or operated by the same person.

311 (b) (i) Subsection (4)(a) applies only if each retail beer dispensing location in the
312 building or resort facility operates in the same manner.

313 (ii) If each retail beer dispensing location does not operate in the same manner:

314 (A) one on-premise beer retailer license designated as a tavern is required for the
315 locations in the same building or on the same resort premises that operate as a tavern; and

316 (B) one on-premise beer retailer license is required for the locations in the same
317 building or on the same resort premises that do not operate as a tavern.

318 Section 7. Section **32B-6-803** is amended to read:

319 **32B-6-803. Commission's power to issue reception center license.**

320 (1) Before a person may store, sell, offer for sale, or furnish an alcoholic product on its
321 premises as a reception center, the person shall first obtain a reception center license from the
322 commission in accordance with this part.

323 (2) The commission may issue a reception center license to establish reception center
324 licensed premises at places and in numbers the commission considers proper for the storage,
325 sale, offer for sale, furnishing, and consumption of an alcoholic product on premises operated
326 as a reception center.

327 (3) Subject to Section **32B-1-201**, the commission may not issue a total number of
328 reception center licenses that at any time exceeds the number determined by dividing the
329 population of the state by [~~56,313~~] 251,693.

330 (4) The commission may not issue a reception center license for premises that do not
331 meet the proximity requirements of Section **32B-1-202**.

332 Section 8. Section **32B-8a-202** is amended to read:

333 **32B-8a-202. Effect of transfer of ownership of business entity.**

334 (1) (a) When the ownership of 51% or more of the shares of stock of a corporation is
335 acquired by or transferred to one or more persons who did not hold the ownership of 51% of
336 those shares of stock on the date a retail license is issued to the corporation, the corporation
337 shall comply with this chapter to transfer the retail license to the corporation as if the

338 corporation is newly constituted.

339 (b) When there is a new general partner or when the ownership of 51% or more of the
340 capital or profits of a limited partnership is acquired by or transferred to one or more persons as
341 general or limited partners and who did not hold ownership of 51% or more of the capital or
342 profits of the limited partnership on the date a retail license is issued to the limited partnership,
343 the limited partnership shall comply with this chapter to transfer the retail license to the limited
344 partnership as if the limited partnership is newly constituted.

345 (c) When the ownership of 51% or more of the interests in a limited liability company
346 is acquired by or transferred to one or more persons as members who did not hold ownership of
347 51% or more of the interests in the limited liability company on the date a retail license is
348 issued to the limited liability company, the limited liability company shall comply with this
349 chapter to transfer the retail license to the limited liability company as if the limited liability
350 company is newly constituted.

351 ~~[(2) A business entity may not transfer a retail license under this section unless, before~~
352 ~~the filing of the transfer application with the department, the business entity initiating the~~
353 ~~transfer complies with Section 32B-8a-301.]~~

354 ~~[(3)]~~ (2) If a business entity fails to comply with this section within 30 days of the day
355 on which the event described in Subsection (1) occurs, the business entity's retail license is
356 automatically forfeited.

357 Section 9. Section 32B-8a-203 is amended to read:

358 **32B-8a-203. Operational requirements for transferee.**

359 (1) (a) A transferee shall begin operations of the retail license within 30 days from the
360 day on which a transfer is approved by the commission, except that:

361 (i) the department may grant an extension of this time period not to exceed 30 days[-];
362 and

363 (ii) after the extension is authorized by the department under Subsection (1)(a)(i), the
364 commission may grant one or more additional extensions not to exceed, in the aggregate, seven
365 months from the day on which the commission approves the transfer, if the transferee can

366 demonstrate to the commission that the transferee:

367 (A) cannot begin operations because the transferee is improving the licensed premises;

368 (B) has obtained a building permit for the improvements described in Subsection

369 (1)(a)(ii)(A); and

370 (C) is working expeditiously to complete the improvements to the licensed premises.

371 (b) A transferee is considered to have begun operations of the retail license if the

372 transferee:

373 (i) has a licensed premises that is open to the public;

374 (ii) sells, offers for sale, or furnishes alcoholic products to a patron on the licensed

375 premises described in Subsection (1)(b)(i); and

376 (iii) has a valid business license.

377 (2) If a transferee fails to begin operations of the retail license within the time period

378 required by Subsection (1), [~~the retail license is forfeited and the commission may issue the~~

379 ~~retail license to another person] the following are automatically forfeited effective immediately:~~

380 (a) the retail license; and

381 (b) the retail license fee.

382 (3) A transferee shall begin operations of the retail license at the location to which the

383 transfer applies before the transferee may seek a transfer of the retail license to a different

384 location.

385 (4) Notwithstanding Subsection (1), the commission may not issue a conditional

386 license unless the requirements of Section [32B-5-205](#) are met, except that the time periods

387 required by this section supersede the time period provided in Section [32B-5-205](#).

388 Section 10. Section **32B-8a-302** is amended to read:

389 **32B-8a-302. Application -- Approval process.**

390 (1) To obtain the transfer of a retail license from a retail licensee, the transferee shall

391 file a transfer application with the department that includes:

392 (a) an application in the form provided by the department;

393 (b) a statement as to whether the consideration, if any, to be paid to the transferor

394 includes payment for [~~any or all of the following: (i) inventory, (ii) fixtures, and (iii)~~] transfer
395 of the retail license;

396 (c) [~~a copy of the notice of intended transfer~~] a statement executed under penalty of
397 perjury that the consideration as set forth in the escrow agreement required by Section
398 32B-8a-401 is deposited with the escrow holder; and

399 (d) (i) an application fee of \$300; and

400 (ii) a transfer fee determined in accordance with Section 32B-8a-303.

401 (2) If the intended transfer of a retail license involves consideration, at least 10 days
402 before the commission may approve the transfer, the department shall post a notice of the
403 intended transfer on the Public Notice Website created in Section 63F-1-701 that states the
404 following:

405 (a) the name of the transferor;

406 (b) the name and address of the business currently associated with the retail license;

407 (c) instructions for filing a claim with the escrow holder; and

408 (d) the projected date that the commission may consider the transfer application.

409 [~~(2)~~] (3) (a) (i) Before the commission may approve the transfer of a retail license, the
410 department shall conduct an investigation and may hold public hearings to gather information
411 and make recommendations to the commission as to whether the transfer of the retail license
412 should be approved.

413 (ii) The department shall forward the information and recommendations described in
414 this Subsection [~~(2)~~] (3)(a) to the commission to aid in the commission's determination.

415 (b) Before approving a transfer, the commission shall:

416 (i) determine that the transferee filed a complete application;

417 (ii) determine that the transferee is eligible to hold the type of retail license that is to be
418 transferred at the premises to which the retail license would be transferred;

419 (iii) determine that the transferee is not delinquent in the payment of an amount
420 described in Subsection 32B-8a-201(3);

421 (iv) determine that the transferee is not disqualified under Section 32B-1-304;

422 (v) consider the locality within which the proposed licensed premises is located,
423 including the factors listed in Section 32B-5-203 for the issuance of a retail license;

424 (vi) consider the transferee's ability to manage and operate the retail license to be
425 transferred, including the factors listed in Section 32B-5-203 for the issuance of a retail license;

426 (vii) consider the nature or type of retail licensee operation of the transferee, including
427 the factors listed in Section 32B-5-203 for the issuance of a retail license;

428 (viii) if the transfer involves consideration, determine that the transferee and transferor
429 have complied with Part 4, Protection of Creditors; and

430 (ix) consider any other factor the commission considers necessary.

431 ~~[(3)]~~ (4) (a) Except as provided in Subsection ~~[(3)]~~ (4)(b), the commission may not
432 approve the transfer of a retail license to premises that do not meet the proximity requirements
433 of Section 32B-1-202.

434 (b) If after a transfer of a retail license the transferee operates the same type of retail
435 license at the same location as did the transferor, the commission may waive or vary the
436 proximity requirements of Subsection 32B-1-202(2) in considering whether to approve the
437 transfer under the same circumstances that the commission may waive or vary the proximity
438 requirements in accordance with Subsection 32B-1-202(4) when considering whether to issue a
439 retail license.

440 Section 11. Section 32B-8a-401 is amended to read:

441 **32B-8a-401. Notification of creditors -- Escrow -- Priority of payments.**

442 (1) Before the filing of a transfer application with the department, if the intended
443 transfer of a retail license involves consideration:

444 (a) the transferor shall provide the transferee a list of creditors who have a claim
445 against the transferor;

446 (b) the transferee shall ~~[provide a copy of the notice of intended transfer to]~~ notify each
447 creditor on the list provided under Subsection (1)(a) of the intended transfer;

448 (c) the transferor and the transferee shall establish an escrow with a person who is not a
449 party to the transfer to act as escrow holder;

450 (d) the transferee shall deposit with the escrow holder the full amount of the
451 consideration; and

452 (e) the transferor and transferee shall enter into an agreement that:

453 (i) the consideration is deposited with the escrow holder;

454 (ii) requires the escrow holder to distribute the consideration within a reasonable time
455 after the completion of the transfer of the retail license; and

456 (iii) directs the escrow holder to distribute the consideration in accordance with
457 Subsection (2).

458 (2) Subject to the other requirements of this section, if a creditor with a claim against
459 the transferor files the claim with the escrow holder before the escrow holder is notified by the
460 department that the transfer is approved, the escrow holder shall distribute the consideration in
461 the following order:

462 (a) to the payment of:

463 (i) the United States for a claim based on income or withholding taxes; and
464 (ii) a claim based on a tax other than specified in Subsection [32B-8a-201\(3\)](#);

465 (b) to the payment of a claim for wages, salaries, or fringe benefits earned or accrued
466 by an employee of the transferor before the transfer or opening of the escrow for the transfer of
467 the retail license;

468 (c) to the payment of a claim of a secured creditor to the extent of the proceeds that
469 arise from the sale of the security;

470 (d) to the payment of a claim on a mechanics lien;

471 (e) to the payment of:

472 (i) escrow fees;

473 (ii) a claim for prevailing brokerage fees for services rendered; and
474 (iii) a claim for reasonable attorney fees for services rendered;

475 (f) to the payment of claims:

476 (i) of a landlord, to the extent of proceeds on past due rent or lease requirements;
477 (ii) for goods sold and delivered to the retail licensee for resale at the transferor's

478 licensed premises; and
479 (iii) for services rendered, performed, or supplied in connection with the operation of
480 the transferor's licensed business;
481 (g) to the payment of other types of claims that are reduced to court-ordered judgments,
482 including a claim for court-ordered support of a minor child; and
483 (h) to the payment of all other claims.

484 **Section 12. Repealer.**

485 This bill repeals:

486 Section **32B-8a-301**, **Notice of intended transfer.**

487 Section **32B-8a-403**, **Statement by transferee.**

488 **Section 13. Effective date.**

489 (1) Amendments to the following sections take effect if approved by two-thirds of all
490 the members elected to each house, upon approval by the governor, or the day following the
491 constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's
492 signature, or in the case of a veto, the date of veto override:

493 (a) Section **32B-6-203**;

494 (b) Section **32B-6-303**;

495 (c) Section **32B-6-703**; and

496 (d) Section **32B-6-803**.

497 (2) Except for the sections listed in Subsection (1), this bill takes effect on May 10,
498 2016.